

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 27, 2005

IN RE:

PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC. TO AMEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY

DOCKET NO. 04-00394

ORDER APPROVING IN PART AND DENYING IN PART PETITION TO AMEND
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

This matter came before Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a Hearing held on February 28, 2005 to consider the *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* (the "*Petition*") requesting that the Authority amend its service area to include a portion of Williamson County, Tennessee known as Williamson County West.

Legal Standard for Granting Certificate of Public Convenience and Necessity

No public utility is permitted to begin construction or operation of a new utility facility or service before obtaining approval of the Authority. The procedure for obtaining a CCN evidencing such approval is set forth in Tenn. Code Ann. § 65-4-201(a), which states as follows:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or

the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate. . . .

Background

On April 6, 1994, Tennessee Wastewater Systems, Inc.¹ (“TWS” or “Company”) received a Certificate of Convenience and Necessity (“CCN”) in Docket No. 93-09040 from the Tennessee Public Service Commission to provide wastewater service to the Oakwood Subdivision in Maury County. Since that time, through various other dockets, the Company has been granted approval to expand its service territory to include other areas in Tennessee. The Company’s principal office is located in Nashville, Tennessee.

The Petition

On November 5, 2004, TWS filed the *Petition* to expand its service area to include a portion of Williamson County, Tennessee known as Williamson County West. The proposed system will initially provide service to 35 homes located in what the company refers to as “Phase I” of the proposed system (the “Stephens Property”) located on Lewisburg Pike in Williamson County West.² TWS attached several letters to its *Petition* in support of its request to expand its service area. First, TWS attached a letter from the owner/developer of the Stephens Property requesting that TWS provide service to the property.³ Second, TWS attached letters from two other potential wastewater service providers acknowledging the Company’s request to provide sewer service to the Stephens Property, stating that each does not provide service to the area, and

¹ Tennessee Wastewater Systems, Inc. was formerly known as On-Site Systems, Inc. This name change was effected by the TRA’s Order of February 19, 2004, in Docket No. 03-00518.

² *Data Response*, p. 1 (January 5, 2005). See also Transcript of Proceedings, p. 67 (February 28, 2005).

³ See *Petition*, (unnumbered attachment) (November 5, 2004) (unaddressed) Letter from Don R. Cameron, III (November 4, 2004).

stating that each has no immediate intention, desire or plan to do so. Neither of these letters addressed the areas of Williamson County West outside of the Stephens Property.⁴

A service area map showing the proposed location of Williamson County West and the Stephens Property was attached to the *Petition* as Exhibit A.⁵ TWS filed the *Pre-Filed Direct Testimony of Charles Pickney, Jr* on February 14, 2005.

Rate Schedules

The Company also attached rate schedules listing the Company's commercial sewer rates (with and without food service), a billing summary of the Company's residential sewer rates, and a listing of the Company's sewer systems with commercial customers.⁶ The attached rate schedules comport with the rate schedule approved by the TRA in Docket No. 99-00393.

The monthly residential rate will be thirty-five dollars and fifty cents (\$35.50) if a lagoon system is used and forty dollars and seventy one cents (\$40.71) if a fixed film treatment is used. Other residential fees include a five percent (5%) fee for non-payment, a disconnection fee of ten dollars (\$10.00), a reconnection fee of fifteen dollars (\$15.00), a returned check fee of twenty dollars (\$20.00), and an annual access fee of eighty-four dollars (\$84.00).

The monthly commercial rate, *without food service*, will be based on the design flow expected from the type of establishment being served. A minimum of seventy-five dollars (\$75.00) per month will be charged for the first 300 gallons per day design flow expected (except off-site⁷ will have a seventy-three dollar (\$73.00) minimum plus pass through costs). For each

⁴ See *Petition*, (unnumbered attachments) (November 5, 2004) Letter from Gregory L Langeliers, Planning Director, Williamson County Planning Commission to Lesa Hay (August 23, 2004), and Letter from Thomas C Puckett, General Manager, H B and T S Utility District to Donnie Cameron (August 24, 2004)

⁵ *Petition*, Exhibit A (November 5, 2004)

⁶ *Petition*, (unnumbered attachments) (November 5, 2004)

⁷ "Off site" means the treatment and disposal are performed by another entity

additional 100 gallons per day of design flow expected, up to 1,000 gallons per day, an additional charge of fifteen dollars (\$15.00) per month per 100 gallons will be applied. For design flows expected over 1,000 gallons per day, up to 3,000 gallons per day, the following monthly charges per 1,000 gallons of daily flow will apply:

<u>Treatment</u>	<u>Drip/Spray Irrigation</u>	<u>Point Discharge</u>	<u>Off Site</u>
Sand-Gravel Filter	\$140.00	\$165.00	N/A
Lagoon	\$116.00	\$140.00	N/A
Off Site	N/A	N/A	Pass-Through Costs + \$73.00

For design daily flows over 3,000 gallons, the monthly charge on all system configurations will be one hundred sixteen dollars (\$116.00) per 1,000 gallons of daily flow. Additional surcharges will apply when expected design flows are exceeded. For any month that a customer's water meter reading exceeds the expected design flow, the following surcharges will apply:

<u>Excess water usage</u>	<u>Surcharge</u>
1 gallon to 1,000 gallons above expected design flow	\$175.00
1,001 gallons to 2,000 gallons above expected design flow	\$200.00
Over 2,000 gallons above expected design flow	\$200.00/1000 gallons

If the water meter readings exceed the design flow for any three consecutive months, the monthly charge will be revised to reflect the increased usage. The customer will pay capital costs associated with increasing the capacity of the system.

The monthly commercial rate, *with food service*, will be based on the design flow expected from the type of establishment being served. A minimum of one hundred dollars (\$100.00) per month will be charged for the first 300 gallons per day design flow expected (except off-site charges, which will be a minimum of ninety-four dollars (\$94.00) plus pass through costs). For each additional 100 gallons per day of design flow expected, up to 1,000 gallons per day, an additional charge of eighteen dollars (\$18.00) per month per 100 gallons will

be applied. For design flows expected over 1,000 gallons per day, up to 3,000 gallons per day, the following monthly charges per 1,000 gallons of daily flow will apply:

<u>Treatment</u>	<u>Drip/Spray Irrigation</u>	<u>Point Discharge</u>	<u>Off Site</u>
Sand-Gravel Filter	\$170.00	\$192.00	N/A
Lagoon	\$142.00	\$163.00	N/A
Off Site	N/A	N/A	Pass-Through Costs + \$94.00

For design daily flows over 3,000 gallons, the monthly charge on all system configurations will be one hundred forty-two dollars (\$142.00) per 1,000 gallons of daily flow. Additional surcharges will apply when expected design flows are exceeded. For any month that a customer's water meter reading exceeds the expected design flow, the following surcharges will apply:

<u>Excess water usage</u>	<u>Surcharge</u>
1 gallon to 1,000 gallons above expected design flow	\$210.00
1,001 gallons to 2,000 gallons above expected design flow	\$220.00
Over 2,000 gallons above expected design flow	\$220.00/1000 gallons

If the water meter readings exceed the design flow for any three consecutive months, the monthly charge will be revised to reflect the increased usage. The customer will pay capital costs associated with increasing the capacity of the system.

Other commercial fees include a five percent (5%) fee for non-payment, a disconnection fee of ten dollars (\$10.00), a reconnection fee of fifteen dollars (\$15.00), a returned check fee of twenty dollars (\$20.00).

The February 28, 2005 Hearing

Pursuant to Tenn. Code Ann. § 65-4-201(a) public notice of the Hearing in this matter was issued by the Hearing Officer on February 1, 2005. No person sought intervention prior to or during the Hearing. At the Hearing held on February 28, 2005, Mr. Charles Pickney, Jr.,

President of TWS, participated, presented testimony, and was subject to examination by the Panel. Mr. Pickney testified that TWS proposes to initially serve 35 homes at the Stephens Property.⁸ He referred to the Stephens Property as “Phase One” of a larger development plan to include the balance of Williamson County West. Mr. Pickney also stated that, “Tennessee Wastewater has the management, technical, and financial ability to provide wastewater service in the area of Williamson County sought in this petition.”⁹

Upon the presentation of the Company’s proof, the evidentiary record as a whole, and in light of the legal standard set forth in Tenn. Code Ann. § 65-4-201(a), Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones voted unanimously to grant the *Petition* in part as to the Stephens Property on Lewisburg in Williamson County West subject to receipt of a final approved permit from the Tennessee Department of Environment and Conservation evidencing its approval of the Company’s application to provide service to the Stephens Property. After finding that the Company had requested an expansion of its service area that was larger in scope than the specific area to be served at the present time a majority of the panel also voted to deny, consistent with Authority decisions in factually similar situations addressed in Docket Nos. 03-00329 and 04-00045, the Company’s request for a CCN to provide services to the remainder of the area known as Williamson County West.¹⁰

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Tennessee Wastewater Systems, Inc to Amend its Certificate of Convenience and Necessity* is provisionally granted in part to the extent that the service area of

⁸ Transcript of Proceedings, p 67 (February 28, 2005)

⁹ *Id* at 66

¹⁰ *Id* at 68 Director Jones also voted to deny without prejudice the CCN for the larger area, but did so for a different reason Director Jones opined that a decision should not be made with regard to the larger land area until the Authority enters a final order in Docket Nos 03-00329 and 04-00045 *Id* at 68-69

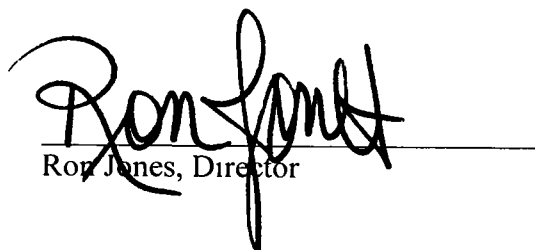
Tennessee Wastewater Systems, Inc. is hereby expanded to include the area identified as the Stephens Property on Lewisburg Pike in Williamson County West and more particularly described in the exhibits to the *Petition*. The Authority's partial approval of the *Petition* is subject to receipt of a final approved permit from the Tennessee Department of Environment and Conservation. The *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* is denied as to the additional territory located in Williamson County West as described in the *Petition* and the attachments thereto.

2. The Petitioner's rates for wastewater service shall be as listed in the rate schedules filed with the *Petition* and as set forth in this Order.

3. The provisional approvals granted herein shall become final upon the filing in this Docket of a copy of the final approved permit evidencing the Tennessee Department of Environment and Conservation's approval of Tennessee Wastewater Systems, Inc.'s application to provide service to the Stephens Property.


Deborah Taylor Tate, Director


Sara Kyle, Director


Ron Jones, Director